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November 9, 2021

VIA ECF

Hon. Paul G. Gardephe, U.S.D.J.
United States District Court
Southern District of New York
40 Foley Square, Room 2204
New York, New York 10007

**Re: Everytown for Gun Safety Action Fund, Inc. v. Defcad, Inc., et al.
Civil Action No. 21-cv-8704 (PGG)**

**DEFENDANTS' REQUEST FOR EXTENSION OF TIME TO FILE OPPOSITION
PAPERS TO PRELIMINARY INJUNCTION**

Dear Judge Gardephe:

We represent Defendants Defcad, Inc., ("Defcad") Phillip Royster, Defcad User xYeezySZN, Odysee User xYeezySZN, The Gatalog, Defcad User Freeman1337, and Twitter User xYeezySZN Defcad, Inc ("Defendants"), in the above referenced matter.

We write to request an extension of time to file opposition to Plaintiff's application for a preliminary injunction. Currently our papers are due this Thursday November 11, 2021. We request an extension of our time to file our papers to November 22, 2021. Defendants have made no previous request for extension of this deadline.

The original briefing schedule was set by an *ex parte* Order to Show Cause entered by the Court last Friday November 5, 2021. On that same day we were retained by our first client in this case, Defcad. Gradually over the next several days, including most recently late yesterday, we were retained by the rest of the Defendants identified above. None the Defendants were served with any papers prior to the entry of the November 5 order to Show Cause.

The briefing schedule affords only six days from the entry of the Order to Show Cause (not even from the date of service) for Defendants to file opposition, while it affords Plaintiff 15 days (November 26, 2021) to file its reply. These dates are highly prejudicial to Defendant and strongly work to Plaintiff's advantage, especially given the several days

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required to get fully retained by all of the above referenced Defendants. Six days from November 5 is very little time in light of the 15 days Plaintiff has to reply.

There are complex issues that must be briefed, including Defendants' objections to jurisdiction and venue, trademark issues under the Lanham Act, and issues of free speech under the First Amendment. Defendants are engaged in expressive political speech, in this case, comment, criticism, and mockery of Everytown and its mission to criminalize the 3D printing of gun parts. For reference, some of Defendants' positions are set forth in more detail in their letter brief filed at **ECF #35**.

Further, our office has been heavily occupied since November 5, 2021 both getting retained and also moving and briefing Defendants' Emergency Letter Motion to stay the *ex parte* expedited discovery order which threatens to violate the anonymous defendants' First Amendment rights. This has severely hampered our ability to simultaneously address the opposition papers due two days from today.

Yesterday, November 8, 2021, I telephoned both of Plaintiff's attorneys, Meaghan Kent and Marcella Ballard at the Venable law firm, to discuss both the *ex parte* expedited discovery order and the briefing schedule. Neither answered my call, and so I left each of them a voicemail message asking them to return my call.

I also followed up yesterday with an email to both of them specifically seeking their consent to extending our time to file our opposition papers to November 22, 2021. I have not received any response from either of them.

Therefore, we seek to file our opposition papers on November 22, 2021. Plaintiff's reply is due November 26, 2021, and the preliminary injunction hearing is December 2, 2021. We do not object if those subsequent dates are adjusted.

Thank you for your attention in this regard.

Respectfully submitted,

/s/ Daniel L. Schmutter
DANIEL L. SCHMUTTER

DLS/srs

cc: Marcella Ballard, Esq. (via ECF and email)
Meaghan Kent, Esq. (via email)